

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BRIAN S.,

Claimant,

Vs.

WESTSIDE REGIONAL CENTER,

Respondent.

Case No. L2006050725

A Proceeding under the Lanterman
Developmental Disabilities Services Act

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Culver City on September 15 and 29, 2006. The Service Agency Westside Regional Center was represented by Martha Thompson, Fair Hearing Coordinator. Claimant Brian S. represented himself.

Claimant presented documentary evidence and written and oral argument. The Service Agency presented the testimony of clinical psychologist Joel Germond, Psy.D., and documentary evidence (Exhs. 1 – 6). Respondent testified and also presented the testimony of friend Victoria Berding and his mother.

At the conclusion of the hearing, claimant requested that the record be held open for one week so that he could submit records. Claimant's request was granted. On October 5, 2006, claimant filed records from Prototypes I-CAN and the Service Agency filed a one-page memorandum, which were both admitted into evidence as Exhibit A and Exhibit 7, respectively.

Oral and documentary evidence having been received; the Administrative Law Judge submitted this matter for decision on October 5, 2006, and finds as follows:

ISSUE

The issue presented for decision is whether claimant has Asperger's Syndrome and, if he does, whether he meets the criteria for eligibility for regional center services within the meaning of Welfare and Institutions Code Section 4512.

FACTUAL FINDINGS

1. Claimant Brian S. was born on August 30, 1969. He is 39 years old and lives in Los Angeles. He seeks benefits from the Westside Regional Center on the basis that he has Asperger's Disorder.

2. On April 21, 2006, the Service Agency denied claimant's request for regional center benefits on the basis of its determination that he is not eligible for the services. The Service Agency determined that claimant is not substantially handicapped by mental retardation, cerebral palsy, epilepsy, autism, or other condition similar to mental retardation, which requires similar treatment, under the criteria of Welfare and Institutions Code section 4512. The Service Agency recommended claimant seek vocational assistance from the Department of Rehabilitation, consultation for independent living skills, and treatment and social skills training from the Department of Mental Health.

3. On or about May 9, 2006, claimant filed a Fair Hearing Request to appeal the determination of the Service Agency that he was not eligible for services. The hearing in this matter followed. Jurisdiction exists in this matter.

4. (A) On October 19, 2005, a licensed clinical social worker and clinical supervisor from Prototypes I-CAN, a mental health center in Pasadena (hereinafter Prototypes), wrote that her agency's records show that claimant was diagnosed with schizoaffective disorder, depressed type, and with Asperger's Disorder following an initial assessment in November 2003. The clinical supervisor added that claimant's diagnosis remained the same after subsequent annual assessments until he was discharged in June 2005.

(B) In November 2003, claimant was referred by his board and care home and case manager to Prototypes for an Adult Initial Assessment due to depression, social isolation, and need to monitor psychotropic medications. The assessment was conducted by a marriage family therapist (MFT) intern at Prototypes. At that time, claimant was unemployed and had previously worked for 13 months at a mental health training program. Claimant presented as calm, oriented, and unimpaired in speech, intellectual functioning, and memory. He had appropriate affect and no apparent disturbances in perception, thought process, or thought content. He had a history of suicide attempts, poor impulse control, and inappropriate social boundaries. The MFT intern found that claimant had poor coping skills for dealing with emotional

distress and did not know how to relate in interpersonal relationships. The MFT intern diagnosed claimant with major depressive disorder, schizoaffective disorder depressive type, Asperger's Disorder, and dependent personality disorder and recommended outpatient individual therapy and training in coping skills. With respect to the secondary diagnosis for Asperger's Disorder, the MFT intern had the clinical impression that claimant felt "extremely awkward, overwhelmed, and intimidated in social interactions." He was said to avoid eye contact, displayed repetitive hand movements and gestures, did not recognize or respond to social cues, and was self-centered in expressing his own needs.

(C) In June and October 2004, another MFT intern at Prototypes affirmed claimant's diagnoses for schizoaffective disorder-depressive type and Asperger's Disorder and recommended continued individual therapy, social support, and training in social, emotional coping, and communication skills. Claimant demonstrated impairment in reality testing and communication as evidenced by persecutory delusions. He had difficulty maintaining appropriate boundaries in relationships because he made abrasive comments, laughed inappropriately, and lacked emotional reciprocity. Claimant was socially isolated, fearful of leaving his home, and avoided relationships due to paranoia and depression.

(D) On June 13, 2005, claimant was discharged from Prototypes and advised to continue attending a program where he could receive group therapy and assistance in social skills, self-awareness, and independent living skills. Prototypes recommended that he continue to see a psychiatrist and take psychotropic medications. Claimant was described as having a history of offending people, acting inappropriately, persecutory delusions and paranoia, and social isolation. He blamed Asperger's Disorder for his history of offending others. He was planning to attend another mental health program.

5. Regional Center Psychological Evaluation (A) On June 2, 2003, the Service Agency referred claimant to Martha Dedricks, Psy.D., for a psychological evaluation to determine whether he is eligible for regional center services. Dr. Dedricks reviewed records; interviewed claimant, his previous psychologist, and current case manager, and administered several psychological tests.

(B) The psychologist found that the records showed that claimant began having difficulties interacting with other children at age two. However, his speech developed in apparently typical manner and he was placed in general education classes at school. He received good grades until ninth grade when he began agitating and teasing other children and saying mean things about them. He did not have friends or relate well to other children. Claimant attended a school for children with problem behaviors. At age 17, he was placed in a state institution. He also attended a private school program in San Bernardino where he continued to alienate other people.

(C) The psychologist found that the records showed claimant has a history of mental health issues. He was first evaluated at age two and received treatment throughout his childhood years. Subsequently, he was diagnosed with Obsessive Compulsive Disorder and Schizoaffective Disorder and has history of depression for which he took medications. Claimant has been prescribed psychiatric medications but does not always take his medications. He has attempted suicide at least four times. He has attended mental health programs and received individual therapy. For several years, he lived at the Homes for Life program, which provided supports, but he was asked to leave after harassing a female resident by calling her names and touching her inappropriately. At the time of his interview, claimant lived independently with Social Security income and financial support from his mother.

(D) Claimant's previous treating psychologist reported that he presented with cognitive and social difficulties and can talk about and offer some insight into his experiences and problems. He has difficulty with non-verbal cues and seeing things from other persons' perspectives. He tends to be blunt, gets frustrated, and does not understand how he comes across to others. The psychologist indicated that claimant feels rules are unfair and often attributes his difficulties to external causes. Claimant's case manager reported that claimant attended a few group sessions and was anxious, did not interact socially with other clients, and did not always keep his attention. He sees himself as a high functioning person with Asperger's Disorder and does not feel comfortable with mentally ill people.

(E) In addition to an interview, the psychologist administered the Vineland Adaptive Behavior Scales II to assess claimant's daily living skills. Claimant's overall adaptive functioning was at the low level in the range of mild deficits and his daily living skills were at the moderately low level. His scores in both socialization and communication were low in the range of mild deficits. He performs all of his hygiene tasks, keeps his apartment clean, and cooks for himself. He has his own checking account and credit cards and pays his own bills. Claimant also takes medications prescribed by his psychiatrist and uses public transportation. He has held jobs at a supermarket and fast food restaurants and worked for 13 months at a treatment center for mentally ill persons. He left his last job at the supermarket because he felt people made fun of him and the work was not challenging.

(F) With respect to communication skills, the psychologist found claimant could speak fluently and comment spontaneously on test items. He used complex and grammatically correct sentences, followed directions, and kept his attention adequately. Claimant accesses the internet, reads the news while online on a computer, and can fill out job applications. His socialization skills were reportedly at the low level in the range of mild deficits. He reported having a couple of friends. He was concerned about his social isolation and depression. He stated that he sometimes becomes paranoid and he gets fearful on buses.

(G) On administering the Wechsler Adult Intelligence Scale, Third Edition, the psychologist found that claimant's verbal IQ was 83 or in the low average range, his performance IQ was 77 or in borderline range, and his full scale IQ was 74 or in the borderline range. His overall cognitive functioning was in the borderline range. However, his low average score on a subtest of arranging pictures of social stories suggested that he was relatively strong in reading visually presented social information. Based on his performance on a pencil and paper task of copying geometric symbols, claimant had low average range score in processing speed. He scored in the borderline range on a task requiring that he identify missing details from pictures of familiar objects, which involved attention to visual detail, as well as on a subtest of constructing designs with red and white blocks, which involved visual-spatial analytical skills. Claimant also scored in the borderline range on a task of identifying patterns among groups of pictures, which is an aspect of non-verbal reasoning.

(H) With respect to his language skills, the psychologist found that claimant's overall level of verbal and auditory-based functioning was in the low average range. He scored in the average range on a subtest of facts and general information as well as on a task of identifying how two items or ideas may be alike, which is an aspect of categorical thinking and verbal reasoning. He scored in the average range on a task of defining vocabulary words, which required more complex expressive language. Claimant also scored in the low average range on a subtest of explaining "common sense" reasons for daily actions and social institutions and when he was asked to read numbers back and forth, which involved short-term memory. He scored in the borderline range when asked to solve math problems without a pencil and paper. Claimant's scores suggested that his verbal comprehension, which involves long-term memory, is relatively strong. On the other hand, his working memory, or the ability to remember one item of information while working on another piece of information, is relatively weak.

6. (A) Based on her evaluation described in Finding 5 above, the psychologist found the claimant presented with a history of mental illness, social difficulties, and unemployment. The psychologist diagnosed him with borderline intellectual functioning and a history of mental health, learning, and unemployment issues. Vocational assistance, group social skills training, independent living skills consultation, and continued mental health treatment were recommended for him.

(B) Claimant's verbal cognitive functioning and his non-verbal and visually-based skills were in the borderline range. His auditory-based skills were in low average range. The psychologist found claimant had the social problems, difficulty reading social cues, and blunt relational style suggestive of Asperger's Disorder. However, he did not appear to have the repetitive behavior, circumscribed interests, or odd preoccupations that characterize persons with Asperger's Disorder. Moreover, claimant was not handicapped in that he lived independently, took care of his own finances, and performed many self-care tasks himself.

7. On June 23, 2006, the Service Agency's psychologist, Joel A. Germond, Psy.D., conducted a review of claimant's file and concluded that he is not eligible for regional center services due to Asperger's Disorder or mental retardation. The psychologist found that Dr. Dedricks's evaluation showed claimant does not have the repetitive behaviors, circumscribed interests, or odd preoccupations characteristic of Asperger's Disorder. Dr. Germond also found that, because claimant lives independently and handles his own finances, claimant does not function or appear to require treatment similar to a person who is mentally retarded. He found claimant does have a history of serious interpersonal problems and suicide attempts.

8. (A) Dr. Germond testified on behalf of the Service Agency that he reviewed claimant's records and found he did not meet eligibility criteria for services for mental retardation, a condition similar to mental retardation, or autism. Claimant's borderline intellectual functioning, low average processing speed, low average language skills, moderately low communication skills, and daily living skills are not typical of a mentally retarded person. His history of typical speech development precludes, and the psychological evaluation does not proffer, a diagnosis of autism or autism spectrum disorder. Rather, the record shows that claimant has been diagnosed and treated for mental health illnesses.

(B) As established by Dr. Germond's testimony, Asperger's Disorder itself is not an eligible diagnosis for regional center services under Welfare and Institutions Code section 4512. Rather, a person may be eligible if his Asperger's Disorder constitutes a form of autism spectrum disorder or pervasive developmental disorder and he is a substantially handicapped by his condition. Dr. Germond testified that claimant has not shown the behaviors characteristic of the disorder such as "mind blindness" wherein he is unable to see another person's perspective. Dr. Germond also opined that claimant is able to live independently and has communication skills such that he is not substantially handicapped.

9. In a memorandum dated October 4, 2006, Dr. Germond has opined that the assessment reports submitted by claimant after the hearing do not show that he has Asperger's Disorder. Dr. Germond notes that, while the initial assessment by Prototypes stated that claimant has repetitive hand movements and gestures, claimant did not engage in such movements or gestures when observed by regional center staff and he does not display restrictive repetitive and stereotyped patterns of behavior, interests, and activities or a fixation or preoccupation with a particular topic or interest typical of Asperger's Disorder.

10. As established by the testimony of his friend, claimant has had a "hellish past." Due to inappropriate behaviors, he has had to move about 30 times in the past five years and cannot keep a job. He feels outside of society and is lonely. He has tried to commit suicide four times in the past year. His friend believes claimant needs a job coach and home support worker, who could help him find a job, work on his motivation, and develop relationships.

11. Claimant further established by the testimony of his mother that he had a very difficult time growing up and attending school. He was born in Skokie, Illinois, and, beginning at age two, played by himself and never had any friends. As a young child, he always had a “distant look” in his eyes and did not socialize or interact with other children. He did not attend other children’s parties or have friends over to his house. Academically, respondent did well in his classes until high school when he failed his classes and was relegated to an off-campus facility day program for emotionally disturbed students. During high school, his mother sent him to Hilltop, a special residential program in the San Bernardino Mountains in California. Respondent has been diagnosed and treated for depression, mental illness, and social problems. He has suffered emotional pain and lack of self esteem due to his alienation and lack of social contact.

12. Claimant contends that he has Asperger’s Disorder, for he has conducted his own research and found that he meets the diagnostic criteria for this syndrome and he has been diagnosed with the disorder by Prototypes. He stated that he grew up without friends and could not relate to people. He contends that the Service Agency should provide him with services that will help him learn social skills.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

Grounds do not exist under the Lanterman Developmental Disabilities Services Act to grant petitioner’s appeal to over-turn the decision of the Service Agency to deny him regional center benefits or services in that it was not established that claimant has a developmental disability within the meaning of Welfare and Institutions Code section 4512, based on Findings 1 – 12 above.

Section 4512 defines “developmental disability” as a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. Developmental disability includes mental retardation, cerebral palsy, epilepsy, and autism. The term also includes disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation but does not include other handicapping conditions that are solely physical in nature.

In this appeal, claimant asserts that he has a developmental disability because he has been diagnosed with Asperger's Disorder. However, it was not established that claimant is disabled by a qualifying condition such as autism spectrum disorder or pervasive developmental disorder or that he is substantially handicapped by any such condition. Specifically, the evidence does not demonstrate by preponderance of the evidence that claimant has Asperger's Disorder. Claimant has presented insufficient evidence that he has been diagnosed or treated for Asperger's Disorder. Rather, claimant has a history of mental health and social interaction and behavioral problems for which he continues to need treatment and assistance but does not make him eligible for regional center services. The letter and records from Prototypes do not necessarily demonstrate that claimant has Asperger's Disorder, for the diagnosis was made by a MFT intern at the mental health center whose clinical impressions are not more persuasive than those of the Service Agency psychologists.

* * * * *

Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The appeal of claimant Brian S. from the determination of the Westside Regional Center is over-ruled. The decision of the Westside Regional Center denying him eligibility for service agency benefits is sustained.

Dated:

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code Section 4712.5. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.